IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

FAO(GWA) No.207 of 1999.
Date of decision:12.07.2007.

Dina Nath **….Appellant**

Versus

General Public & Others. **….Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Appellant:	**Mr.Bhupender Gupta, Senior Advocate with Mr.Praneet Gupta, Advocate.**
For Respondent No.2:	**Mr.B.K. Sood , Advocate.**
For Army Authorities:	**Mr.Sandeep Sharma, Assistant Solicitor General of India.**

Dev Darshan Sud,J.

This appeal has been preferred by Shri Dina Nath, who is the grand-father of the minors; Master Lucky Anand and Ms.Savita Bala, against the judgment and order of the learned Additional District Judge, Kangra at Dharamshala, whereby his petition filed under the Guardian and Wards Act was dismissed and the petition filed by Shri Partap Chand, the maternal grand-father of the minors, was allowed.

Brief facts for the disposal of this appeal which are being considered are that Master Lucky Anand

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[1] *Whether the reporters of Local Papers may be allowed to see the judgement*?

and Ms.Savita Bala are the children of Shri Hoshiar Singh and Smt.Suman Kumari, who died on 18.12.1996 and 19.12.1996 respectively from burn injuries which were sustained by them. At the relevant point of time, Shri Hoshiar Singh was serving in the Indian Army. Both the grand-father as also the maternal grand-father of the children petitioned the Court under the provisions of the Guardian and Wards Act (hereinafter referred to as the "Act") for custody of the minor children. The petitions were tried together and by its judgment dated 22.5.1999, the learned Additional District Judge, granted custody of the children to the maternal grand-father, Shri Partap Chand. The learned Additional District Judge, while deciding the petitions, considered the evidence and the law applicable and concluded that the interest of the minors would be sub-served in case their custody is given to their maternal grand-father Shri Partap Chand.

I have heard learned counsel for the parties and have gone through the record of the case.

Apart from the fact that the judgment cannot be described as well reasoned, since the learned Additional District Judge only notes the evidence and the law, but while deciding the case, disposes it of in one short paragraph, change in the circumstances during the pendency of the appeal would require an order to be made which is in the interest of both the children. As such, the present petition is not being disposed of on merits of the respective contentions put forth by the parties,

but on the changed circumstances which may be noticed. Firstly, Master Lucky Anand has now attained majority. So far as the petition for his custody is concerned, no prayer can be entertained. Secondly, I had called both the children and talked to them in length in my Chambers to ascertain from them their wishes. I found them to be well behaved, intelligent and they conversed with me freely. Both of them frankly and candidly admitted that they were very happy staying with their grand-father and were also meeting their maternal grand-father and other relations off and on. There was no ill-will or ill feeling between the grand parents or of the children towards their paternal or maternal relations. In these circumstances, it would not be a fit case in which any order should be made in favour of one party or the other. After all, it is the welfare of the children which is being considered and at present only of Ms.Savita Bala.

During the pendency of this petition, the Army Authorities had been called upon to disclose to this Court the benefits which could be granted to the minors on the death of their father. A detailed reply has been submitted by the Army Authorities. Apart from the insurance benefits, the monetary benefits, dues and outstanding have been detailed by the Army Authorities in the affidavit of Brig.J.S. Kanwar.

In the facts and circumstances of the case, the following directions are issued:-

(i) The children will continue to live with their grand-father as desired by them. However, this would not preclude the maternal grand-father from visiting them or any hindrance being placed in the way of the children from visiting their maternal grand-father or any of other relations they may choose to do so, of-course, within reasonable limits.

(ii) The Army Authorities are directed to remit the entire amount including family pension benefits due to the children on the death of their father to the Registry of this Court. On receipt thereof, the amount shall be invested by the Registry in equal shares in the best possible manner to obtain the maximum returns. No amount will be disbursed to any party without specific orders of this Court. Any need of the children i.e. for education, maintenance etc. will be considered by this Court as and when such a demand will be made. At present Master Lucky Anand is studying in Military School, 3, Dogra Regiment, Jallandhar Cantt. In case any money is required for his education etc., it shall be released to the child on the specific request of the

Principal for payment to the child for his requirement.

(iii) The amount received from the Army Authorities payable to both the children including family pension etc. will be kept in separate accounts to be opened in their names and to be operated on the direction of the Registry. This Court will administer the funds till further orders. A sum of Rs.50,000/- alleged to have been taken away by the appellant shall be re-deposited in this Court to be invested equally in the names of the minors.

This appeal is, accordingly, disposed of. There shall be no order as to costs. The learned Standing Counsel for the Army Authorities will convey the order to them forthwith for remitting the amount in accordance with law.

July 12, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**